UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

AARON CLARK, Plaintiff, v. **THE WALT DISNEY COMPANY; JAKKS PACIFIC, INC.; PLAY ALONG TOYS; KB TOYS; AMAZON.COM; and TOYS 'R US,** Defendants.	Case No. 2:08CV982

JAKKS PACIFIC, INC.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

[NOS. 1 THROUGH 60]

Dockets.Justia.com

TO PLAINTIFF AARON CLARK, AND TO HIS ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED that pursuant to the provisions of Rule 34 of the Federal Rules of Civil Procedure, Defendant JAKKS Pacific, Inc. ("JAKKS") requests that within thirty (30) days of service hereof, at the offices of Foley & Lardner LLP, located at 555 So. Flower Street, Los Angeles, CA, you produce and permit the inspection and photocopying of the documents hereinafter designated. Please note, however, that production may be accomplished by mailing or by otherwise delivering copies of the requested documents to Foley & Lardner LLP at the above address no later than the date otherwise scheduled for inspection and photocopying, provided that you make the originals of such documents available for inspection and photocopying at a later date upon reasonable notice by JAKKS or its authorized representative.

In responding to these Requests, you are required to produce all nonprivileged documents available to you, including not only documents in your possession, custody or control, but also in that of your attorneys, agents, and other representatives, or anyone acting in cooperation or concert with them.

DEFINITIONS

1. The term "Clark," "You" or "Your" means Plaintiff Aaron Clark and any agent, employee, servant, representative, or any other person or entity in privity with or controlled by Clark.

2. The term "Inotrend" means Inotrend, Inc., and any parent, affiliate, or subsidiary (whether owned in whole or in part), any agent, officer, director, employee, servant, representative, shareholder, and any predecessor company, and any other person or entity in privity with or controlled by Inotrend.

59. All documents evidencing, reflecting, or referring to any instances of confusion resulting from Defendants' actions as alleged in the Complaint.

Answer:

60. All communications between You and Inotrend related, in any way, to a Covered Product, the Patent-in-Suit, or any Related Patent Matters.

Answer:

Dated: February 11, 2009

Respectfully submitted,

By: /s/ *Michael C. Lueder*
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/s/ *Grant E. Kinsel*
Grant Kinsel
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Attorneys for JAKKS Pacific, Inc., Play Along Toys, KB Toys, and Toys "R" Us, The Walt Disney Company

CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served today with a copy of this document via by electronic mail, facsimile transmission and/or first class mail on this same date.

Dated: February 11, 2009 /s/ Grant E. Kinsel

Brian Edward Dickerson The Dickerson Law Group 5003 Horizons Drive Suite 200 Upper Arlington , OH 43220 614-339-5370 Fax: 614-442-5942 bdickerson@dickerson-law.com Kevin R Conners 5003 Horizons Drive Suite 101 Columbus , OH 43220 614-562-5877 kevinconners@kevinconners.com Sharlene I Chance The Dickerson Law Group 5003 Horizons Drive Suite 200 Columbus , OH 43220 614-339-5370 Fax: 614-442-5942 schance@dickerson-law.com	Attorneys for Plaintiff Aaron Clark

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

AARON CLARK,

Plaintiff,

v.

THE WALT DISNEY COMPANY; JAKKS PACIFIC, INC.; PLAY ALONG TOYS; KB TOYS; AMAZON.COM; and TOYS 'R US,

Defendants.

Case No. 2:08CV982

PLAINTIFF AARON CLARK'S RESPONSE TO JAKKS PACIFIC, INC.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

[NOS. 1 THROUGH 60]

Now comes Plaintiff Aaron Clark (hereinafter "Plaintiff"), pursuant to Rules 26 of the Federal Rules of Civil Procedure (hereinafter the "Rule") and Rule 26.1 of the Local Rules of the United States District Court for the Southern District of Ohio (hereinafter the "Local Rules") and respectfully submits the following objections and responses to Defendant JAKKS Pacific Inc.'s (hereinafter "Defendant") First Request for Production of Documents (hereinafter "Requests").

GENERAL OBJECTIONS

To avoid undue and unnecessary repetition, Plaintiff makes the following general and continuing objections to the Requests. All general and continuing objections apply to each response to the Requests. Although these objections may be specifically referred to elsewhere in a Response, failure to mention a general and continuing objection should not be construed as a waiver of that objection. Moreover, the assertion of the same, similar, or additional objections in response to specific Requests does not waive, limit, or modify any of these General Objections.

1. Plaintiff objects to Defendant's Requests to the extent they impose burdens beyond the obligations of discovery as proscribed by the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Court for the Southern District of Ohio and are not reasonably calculated to lead to the discovery of admissible evidence.

2. Plaintiff objects to Defendant's Requests that the production of documents at the offices of Foley & Lardner LLP, located at 555 So. Flower Street, Los Angeles, CA imposes burdens beyond the obligations of discovery as proscribed by the Federal Rules of Civil Procedure and Local Civil Rules of the United States District Court for the Southern District of Ohio. Rule 34 only requires that Plaintiff make the requested documents available for inspection and copying and not bear the costs of copying. As such, Defendant shall have access to the documents demanded at Plaintiff's counsel's office at The Dickerson Law Group, P.A., 5003 Horizons Drive, Suite 101, Columbus, Ohio 43220 and bear reasonable copying costs.

SPECIFIC OBJECTIONS AND RESPONSES

Without waiving and subject to the foregoing General Objections and qualifications, which are incorporated into each response below, Plaintiff responds as follows to each specific request:

REQUESTS FOR PRODUCTION

1. All documents evidencing, reflecting, or referring to the preparation of any Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 4-6, 8-10, 12, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

2. All documents evidencing, reflecting, or referring to the prosecution of the Patent-in-Suit and any Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-6, 8-10, 12, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

3. All file histories and correspondence relating, in any way, to the prosecution of the Patent-in-Suit and any Related Patent Matters in the United States Patent and Trademark Office and foreign patent offices.

Answer: *See* General Objections, including, but not limited to, General Objections 3-6, 8-10, 12, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

4. All documents evidencing, reflecting, or referring to Prior Art and potential Prior Art for the Patent-in-Suit.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 15 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

5. All documents evidencing, reflecting, or referring to foreign patents or patent applications claiming priority from the Patent-in-Suit.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

6. All documents evidencing, reflecting, or referring to written opinions, analyses, or communications concerning the patentability of the invention claimed in, or alleged infringement of, the Patent-in-Suit or any Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-6, 8-10, 12, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

7. All documents identified or obtained in the course of all searches or investigations relating to the patentability of the subject matter disclosed or claimed in the Patent-in-Suit or Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will

make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

8. All documents evidencing, reflecting, or referring to Prior Art cited by the patent office of any country or international organization in any patent application or other patent proceeding for the Patent-in-Suit or any Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 15-16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

9. All documents evidencing, reflecting, or referring to any subject matter claimed in the Patent-in-Suit, where the document was published or available to any member of the public prior to March 10, 1995.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

10. All documents evidencing, reflecting, or referring to communications concerning the Patent-in-Suit from and to You and/or all attorneys and agents prosecuting the Patent-in-Suit and Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

11. All documents disclosing any element of any claim of the Patent-in-Suit that bears a date, or was created, on or before March 10, 1995, including but not limited to, any patent or other public disclosure, or any offer to sell or sale of any product, as well as all advertising materials, invoices, product brochures, catalogs, letters, correspondence, purchase orders, bills of lading, shipping documents, customs documentation, artist proofs, advertising bills, and payment checks.

Answer: *See* General Objections, including, but not limited to, General Objections 3-7, 9-10, 12 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

12. All documents evidencing, reflecting, or referring to the first sale or offer for sale of any Covered Product.

Answer: *See* General Objections, including, but not limited to, General Objections 4-10, 12, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

13. All documents evidencing, reflecting, or referring to the original and revised blueprints, design reports, illustrations, diagrams, test specifications, drawings, specifications, control drawings, sales outline drawings, engineering documents, schematic diagrams, process schematics, design documents, project books, project files, manufacturing invoices, requests for proposals, requests for quotations, and correspondence for all versions of any prototype of any Covered Product.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will

make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

14. All documents evidencing, reflecting, or referring to any Covered Product which is dated prior to, or which existed prior to, March 10, 1995.

Answer: *See* General Objections, including, but not limited to, General Objections 3-7, 9-10, 12, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

15. All documents evidencing, reflecting, or referring to whether the inventions claimed in the Patent-in-Suit work as described in the specification of the Patent-in-Suit.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

16. All documents evidencing, reflecting, or referring to the first three months of sales and/or offers for sale of any Covered Product.

Answer: *See* General Objections, including, but not limited to, General Objections 3-7, 9-10, 12, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

17. All documents evidencing, reflecting, or referring to the first time any Covered Product was offered for sale, sold, publicly used, publicly known, or accessible to the public including but not limited to, advertising materials, invoices, product brochures, catalogs, letters,

correspondence, purchase orders, bills of lading, shipping documents, customs documentation, artist proofs, advertising bills, and payment checks.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

18. All articles emanating from, or published or authored by, the Inventor relating, in any way, to the subject matter claim in the Patent-in-Suit or any Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

19. All documents evidencing, reflecting, or referring to any litigation threatened or brought concerning the Patent-in-Suit or any Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff states that he has no responsive documents in his possession, custody, or control.

20. All Prior Art disclosed in any lawsuit threatened or brought concerning the Patent-in-Suit or any Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 15-16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff states that he has no responsive documents in his possession, custody, or control.

21. All documents claimed by anyone to constitute Prior Art against the Patent-in-Suit or Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 15-16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff states that he has no responsive documents in his possession, custody, or control.

22. All documents evidencing, reflecting, or referring to any claim by You that there are indicia of non-obviousness concerning any claim found in the Patent-in-Suit.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff states that he has no responsive documents in his possession, custody, or control.

23. All discovery requests and responses, including all deposition transcripts, interrogatory answers, and responses to requests for admission, relating to any litigation involving the Patent-in-Suit or any Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff states that he has no responsive documents in his possession, custody, or control.

24. All motions, including summary judgment motions and motions to dismiss, oppositions, and responses thereto relating to the Patent-in-Suit or any Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff states that he has no responsive documents in his possession, custody, or control.

25. All documents charging anyone with infringement of the Patent-in-Suit or any Related Patent Matters, and all responses thereto.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff states that he has no responsive documents in his possession, custody, or control.

26. All documents evidencing, reflecting, or referring to each and every authorization, permission, license, license agreement and every other form of actual grant or attempt to grant, to any person, of part of or all of the rights under the Patent-in-Suit or Related Patent Matters, including but not limited to, all licenses, settlement agreements, assignments, UCC-1 statements, employment agreements, mortgage agreements, pledge agreements, security agreements, and/or sales agreements.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

27. All documents evidencing, reflecting, or referring to any license or agreement into which You have entered relating, in any way, to a Covered Product, the Patent-in-Suit, or any Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

28. All documents evidencing, reflecting, or referring to any license into which You have entered relating, in any way, to posters that include sound mechanisms including any and all license agreements by which You obtained any right to use any famous character or image on such posters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will

make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

29. All documents evidencing, reflecting, or referring to any potential license concerning which You have entered into negotiations relating, in any way, to a Covered Product.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

30. All documents evidencing, reflecting, or referring to any potential license concerning which You have entered into negotiations relating, in any way, to posters that include sound mechanisms.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

31. All documents evidencing, reflecting, or referring to all correspondence offering licenses or assignments or relating, in any way, to negotiations for same, relating to the Patent-in-Suit or Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

32. All documents evidencing, reflecting, or referring to royalty payments or license fees for, and all documents evidencing, reflecting, or referring to the title or ownership rights of, the Patent-in-Suit and any Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

33. All documents by which You obtained any rights to the Patent-in-Suit, including but not limited to, any assignments or licenses between You and Inotrend or any other party claiming any interest, in whole or in part, in the Patent-in-Suit.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

34. All documents evidencing, reflecting, or referring to sales, offers to sell and returns of any Covered Product, and all profits made from such sales, including, but not limited to, all price lists, invoices, purchase orders, inventory records, sales summaries, and all documents concerning profits, net and gross profit margin, costs of distribution, and license cost concerning any Covered Product.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

35. All documents evidencing, reflecting, or referring to the manufacture of any Covered Product.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

36. All documents sufficient to identify all customers for the Covered Products.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

37. All instruction, service and installation manuals relating to the Covered Products.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

38. All documents evidencing, reflecting, or referring to complaints regarding any Covered Products from sales representatives, distributors, retailers, customers or others.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

39. All descriptive advertising or promotional materials relating, in any way, to any Covered Product including, but not limited to, press releases and trade journal articles,

advertisements, catalogs, materials prepared for use in trade meetings and conventions, package inserts, technical data sheets, product specifications, circulars, leaflets, direct mail pieces, newspaper and magazine advertisements, telephone advertisements and photographs of all trade show or display advertisements and any other written or electronically stored materials.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

40. Customer orders, purchase orders, invoices, bills of lading, and summaries of sales for all Covered Products.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12 and 17. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

41. All documents evidencing, reflecting, or referring to revenues received by You from the sales of any Covered Product.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

42. All documents evidencing, reflecting, or referring to Your allegations that Defendants' infringement of the Patent-in-Suit referred to in Your Complaint in this action has been willful and/or intentional.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff has previously produced all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

43. All documents upon which You intend to rely in this action (including but not limited to, all attorney opinion letters and memoranda) to support the claims of patent infringement alleged against the Defendants in this action.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff has previously produced all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

44. All documents relating, in any way, to any expert witness retained by You for this lawsuit. This request includes, but is not limited to, all documents evidencing, reflecting, or referring to the qualifications or experience of any expert witness, publications authored by any expert witness, and all treatises, books and any other documents upon which the expert witness will base his or her testimony.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will produce all non-privileged documents in his possession, custody, or control responsive to this request, 60 days before the deadline for completing all discovery, per Preliminary Pretrial Order (Doc. 20).

45. All documents evidencing, reflecting, or referring to the display or sale of any Covered Product since issuance of the Patent-in-Suit, which product was not marked pursuant to 35 U.S.C. § 287, including but not limited to: (1) all price lists, invoices, purchase orders,

inventory records, and related information; (2) all descriptive advertising or promotion materials, packaging, press releases, trade journal articles, advertisements, catalogs, materials prepared for use in trade meetings and conventions, package inserts, technical data sheets, product specifications, and any other publicly disseminated material promoting or describing Covered Products; and (3) all correspondence to or from anyone licensed to make or sell a Covered Product.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

46. All documents evidencing, reflecting, or referring to Your marking pursuant to 35 U.S.C. § 287 of any product with the number of the Patent-in-Suit or Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

47. A sample of each Covered Product.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

48. All documents evidencing, reflecting, or referring to Your claims that Defendants have infringed the Patent-in-Suit either literally or under the doctrine of equivalents.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff has previously produced all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

49. All documents evidencing, reflecting, or referring to any claim by You that Defendants have induced or contributed to the infringement of the Patent-in-Suit either literally or under the doctrine of equivalents.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13, 17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

50. All documents evidencing, reflecting, or referring to any claim by You that this action is an exceptional case entitling You to recover Your attorneys' fees from Defendants.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff states that he has no responsive documents in his possession, custody, or control.

51. All documents evidencing, reflecting, or referring to any damages You claim You suffered as a result of Defendants' actions.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff states that he has no responsive documents in his possession, custody, or control at this stage of the discovery proceedings and will supplement his response when Plaintiff discovers additional information.

52. All documents evidencing, reflecting, or referring to any loss of sales or licensing royalties allegedly suffered by You as a result of Defendants' actions alleged herein.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff states that he has no responsive documents in his possession, custody, or control at this stage of the discovery proceedings and will supplement his response when Plaintiff discovers additional information.

53. All documents evidencing, reflecting, or referring to the nature and amount of any reasonable royalty to which You claim You are entitled as a result of Defendants' alleged infringement of the Patent-in-Suit.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff states that he has no responsive documents in his possession, custody, or control at this stage of the discovery proceedings and will supplement his response when Plaintiff discovers additional information.

54. All documents evidencing, reflecting, or referring to any royalties You have received from any person or party in licensing rights to practice the inventions in the Patent-in-Suit or any Related Patent Matter.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

55. All communications between You and any Defendant in this action.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff has previously produced all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

56. All documents evidencing, reflecting, or referring to offers, discussions, or negotiations between You and any Defendant in this action relating, in any way, to a Covered Product, the Patent-in-Suit, or Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13, 16 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff has previously produced all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

57. All documents evidencing, reflecting, or referring the chain of title for the Patent-in-Suit, including but not limited to, all assignments or licenses relating, in any way, to the Patent-in-Suit.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

58. All documents evidencing, reflecting, or referring to Your claim that Defendants engaged in any violation of the Lanham Act with respect to the sale of any products.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-13 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff has previously produced all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

59. All documents evidencing, reflecting, or referring to any instances of confusion resulting from Defendants' actions as alleged in the Complaint.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12, and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff has previously produced all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

60. All communications between You and Inotrend related, in any way, to a Covered Product, the Patent-in-Suit, or any Related Patent Matters.

Answer: *See* General Objections, including, but not limited to, General Objections 3-10, 12-14, 16-17 and 19. Subject to and without waiver of the foregoing General Objections, Plaintiff will make available for inspection and copying all non-privileged documents in his possession, custody, or control, if any, responsive to this request.

AS TO ALL OBJECTIONS,

Sharlene I. Chance

Sharlene I. Chance (0070999)

Respectfully submitted,

Sharlene I. Chance

Brian E. Dickerson (0069227)
Lead Trial Attorney
Sharlene I. Chance (0070999)
Kevin R. Conners (0042012)
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Attorneys for Plaintiff Aaron Clark

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2009, I served via electronic mail and Regular U.S. Mail, postage prepaid, the foregoing upon:

Michael C. Lueder
Trial Attorney
mlueder@foley.com
Foley & Lardner LLP
777 E. Wisconsin Avenue
Milwaukee, WE 53202

Grant Kinsel
Pro Hac Vice
GKinsel@foley.com
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Los Angeles, CA 90071

Sharlene I. Chance

Sharlene I. Chance (0069227)
Attorney for Plaintiff Aaron Clark

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April 27, 2009

CLIENT/MATTER NUMBER
094622-0101

VIA E-MAIL AND U.S. MAIL

Ms. Sharlene I. Chance
Dickerson Law Group
5003 Horizons Drive
Suite 101
Columbus, Ohio 43220

Re: *Clark v. The Walt Disney Co., et al.*
Case No. 2:08CV982 (S.D. Ohio)

Dear Sharlene:

We write pursuant to Local Rule 37.1 to request a conference to attempt to resolve our concerns with Plaintiff's responses to JAKKS' First Set of Requests For Production of Documents [Nos. 1-60]. We believe Plaintiff's discovery responses are deficient in multiple respects and must be immediately supplemented. Specifically:

RFP No. 1-3, 10: These RFPs request all documents related to the preparation or prosecution of the patents-in-suit and Related Patent Matters, including but not limited to the file histories and correspondence with the U.S. Patent and Trademark Office ("PTO"). While Plaintiff has produced portions of the file history of the patent-in-suit with its initial disclosures (*e.g.*, Patent Application), Plaintiff has failed to produce the complete file history of the patent-in-suit (*e.g.*, Office Actions, Amendments, etc.). In addition, Plaintiff has also failed to produce any documents related to Related Patent Matters, including but not limited to Application Serial Nos. 08/651,332, 08/666/136, or 08/967,557.

RFP No. 4, 7, 8, 9, 11, 14, 17: These RFPs request all documents related to Prior Art or potential Prior Art. Plaintiff has failed to produce any prior art or potential prior art.

RFP No. 5: This RFP requests documents related to foreign patents or patent applications. Plaintiff has failed to produce any such documents.

RFP No. 6: This RFP requests all documents related to the patentability of the invention claimed in, or alleged infringement of, the Patent-in-Suit or any Related Patent Matters. Plaintiff's response to JAKKS' Interrogatory No. 11 indicates that Plaintiff performed an infringement analysis in the middle of 2008, and that additional infringement analyses have been performed by other parties. Plaintiff, however, has failed to produce these documents, including but not limited to the analyses themselves and any communications related to the analyses.

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RFP No. 26-31, 33, 57: These RFPs request all agreements related to the patent-in-suit and Related Patent Matters, including but not limited to, all license and assignment agreements. Plaintiff's response to JAKKS' Interrogatory No. 15 indicates that the patent-in-suit "was assigned to Inotrend, then to Aaron Clark, then jointly to Aaron Clark and John Peirano." While Plaintiff has produced a copy of the assignment records filed with the PTO, Plaintiff has failed to produce any of the assignment agreements. Similarly, Plaintiff's supplemental response to JAKKS' Interrogatory No. 7 indicates that Plaintiff has licensed the patent-in-suit to OSP Co. and Resaurus Corp. Plaintiff has failed to produced these executed license agreements.

RFP No. 47: This RFP requests samples of each alleged Covered Product. In response to JAKKS' Interrogatories Nos. 7 and 21, Plaintiff provided a list of alleged Covered Products. While Plaintiff has produced some samples of these alleged Covered Products (*e.g.*, Power Rangers Talking Poster, Back Street Boys Talking Poster, N-Sync Talking Poster #1, N-Sync Talking Poster #2, Ricky Martin Talking Poster), Plaintiff has not produced samples of each of the alleged Covered Products identified in response to Interrogatories Nos. 7 and 21 (*e.g.*, Looney Tunes Talking Poster, Batman Forever Talking Posters, Space Jam Talking Posters, etc.).

As discussed in detail above, Plaintiff's responses to JAKKS' First Set of Requests For Production of Documents [Nos. 1-60] are deficient. Defendants expressly reserve the right to supplement its objections to Plaintiff's responses.

Please confirm that the responses will be supplemented no later than **May 4, 2009**. In the alternative, please contact me to arrange for a telephone conference to further discuss these responses. If we have not heard from you by the end of the day **April 30, 2009**, we will assume that the parties have exhausted their efforts to reach an informal resolution to the discovery dispute and will immediately request another discovery conference with Magistrate Judge Abel.

Sincerely,

Michael J. Song

cc: Brian Dickerson (via email only)

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Sharlene I. Chance
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(614) 339-5373 (direct dial)

April 30, 2009

VIA ELECTRONIC MAIL

Michael Song
MSong@foley.com
Foley & Lardner LLP
555 South Flower Street
Suite 3500
Los Angeles, CA 90071

RE: *Clark v. The Walt Disney Company, et al*
Case No.: 2:08CV982

Dear Mr. Song,

In response to your letter dated April 27, 2009, Plaintiff states the following:

RFP Nos. 1-3, 5, 10: Plaintiff will supplement and make available for inspection and copying documents related to the preparation or prosecution of the '272 Patent on May 4, 2009 at The Dickerson Law Group, P.A. 5003 Horizons Drive, Suite 101, Columbus, Ohio 43220.

However, any documents related to the preparation or prosecution of any Related Patent Matters, including but not limited to Application Serial Nos. 08-651,332, 08/666,136 or 08/968, 557 are not in Plaintiff's custody, possession or control. Plaintiff, aware of his continuing duty to supplement his discovery responses, has contacted his former counsel who assisted with the '272 Patent application and Related Patent Matters requesting a copy of his file. At such time Plaintiff receives a copy of the same, Plaintiff will immediately supplement his response.

RFP No. 4, 7, 8, 9, 11, 14, 17: Plaintiff will supplement and make available for inspection and copying documents related to Prior Art or potential Prior Art, in his custody, possession or control and which has

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been disclosed in response to RFP 1-3, 5, 10. Again, Plaintiff will continue to supplement his discovery responses upon receiving information from his prior counsel of documents related to Prior Art or potential Prior Art which is not in his custody, possession or control.

RFP No. 6: Plaintiff performed a visual infringement analysis and as such he has no written documents in his custody, possession or control. As counsel for Defendants have been made aware and as provided for in the Preliminary Pretrial Order (Doc 20) all expert analysis reports and/or documents will be disclosed no later than 60 days before the deadline for completing all discovery.

RFP No. 26-31, 33 and 57: Plaintiff does not have any documents in his custody, possession or control as it relates license agreements with OSP Co. and Resaurus Corp.

RFP No. 47: Plaintiff will supplement and make available for inspection and copying additional Covered Products in his custody, possession or control which are responsive to this request for production and Interrogatories Nos. 7 and 21. These Covered Products are available for inspection and copying at The Dickerson Law Group, P.A. 5003 Horizons Drive, Suite 101, Columbus, Ohio 43220.

Plaintiff expressly reserves the right to supplement his responses to Defendant JAKKS First Set of Requests for Production of Documents.

Thank you,

Sharlene I. Chance

Encl.

cc: Grant Kinsel (via e-mail)
Brian E. Dickerson (via e-mail)

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May 1, 2009

CLIENT/MATTER NUMBER
094622-0101

VIA E-MAIL

Ms. Sharlene I. Chance
Dickerson Law Group
5003 Horizons Drive
Suite 101
Columbus, Ohio 43220

Re: *Clark v. Walt Disney Co., et al.*
Case No. 2:08-CV-982 (S.D. Ohio)

Dear Sharlene:

Thank you for your letter dated April 30, 2009. In response to that letter:

I. Possession, Custody, or Control

In your April 30, 2009 letter, you state that certain documents "are not in Plaintiff's custody, possession or control," including but not limited to, documents related to the preparation or prosecution of Related Patent Matters (*e.g.*, Application Serial Nos. 08/651,332; 08/666,136; and 08/968,557), prior art, and potential prior art. Instead, you state that these documents are in the possession of Plaintiff's former counsel.

However, "the clear rule is that documents in the possession of a party's current or former counsel are deemed to be within that party's possession, custody and control." *Johnson v. Askin Capital Mgmt., L.P.*, 202 F.R.D. 112, 114 (S.D.N.Y. 2001); *see also Treister v. PNC Bank*, 2007 U.S. Dist. LEXIS 10616, at *11 (S.D. Fla. 2007); *Jans v. Gap Stores, Inc.*, 2006 U.S. Dist. LEXIS 67266, at *3-4 (M.D. Fla. 2006) (citing cases); *CSI Investment Partners II, L.P. v. Cendant Corp.*, 2006 U.S. Dist. LEXIS 9929, at *16 (S.D.N.Y. 2006); *Poole v. Textron, Inc.*, 192 F.R.D. 494, 501 (D. Md. 2000) (citing cases); *MTB Bank v. Federal Armored Express*, 1998 U.S. Dist. LEXIS 922, at *12-13 (S.D.N.Y. 1998) (citing cases); *Variable*, 1994 U.S. Dist. LEXIS 11185, at *17 n.5.

Similarly, it is well-established that "control" under Rule 34 of the Federal Rules of Civil Procedure is defined as the "legal right to obtain documents requested upon demand." *Jans*, 2006 U.S. Dist. LEXIS 67266, at *3 (citing cases); *see also Poole*, 192 F.R.D. at 501 (citing cases); *MTB*, 1998 U.S. Dist. LEXIS 922, at *13 (citing cases).

These well-established standards regarding "possession, custody or control" apply to *each and every* one of JAKKS' requests for production. Thus, Defendants demand that Plaintiff supplement its production with any and all documents responsive to JAKKS' First Set of Requests for Production that are in its "possession, custody or control" under these well-established definitions by **May 8, 2009**.

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II. RFP Nos. 1-3, 4-5, 7-9, 11, 14, 17

While we appreciate that Plaintiff has already contacted his former counsel to obtain documents responsive the JAKKS' discovery requests, we note that Plaintiff is **required** to do so under the Federal Rules of Civil Procedure. For example, patent applications *filed by Plaintiff* are clearly in Plaintiff's "possession, custody or control," and should have already been produced.

Thus, Defendants demand that Plaintiff produce documents responsive to these RFPs by **May 8, 2009**.

III. RFP Nos. 26-31, 33 and 57

In your April 30, 2009 letter, you state that "Plaintiff does not have any documents in his custody, possession or control as it relates to [sic] license agreements with OSP Co. and Resaurus Corp."

First, Plaintiff, *as the licensor*, has the legal right to obtain documents from its licensees upon request. Thus, these (and all) license agreements for the patents-in-suit are clearly in Plaintiff's "possession, custody or control," and should have already been produced.

Second, the identified requests are not limited to the license agreements with OSP Co. and Resaurus Corp. For example, our April 27, 2009 letter specifically noted that Plaintiff has not produced any of the assignment agreements related to the patent-in-suit. Again, these agreements assigning an interest in *Plaintiff's patent-in-suit* are clearly in Plaintiff's "possession, custody or control," and should have already been produced.

Thus, Defendants demand that Plaintiff produce documents responsive to these RFPs by **May 8, 2009**.

IV. RFP Nos. 19-25, 50-53

Plaintiff responded to these RFPs by stating that Plaintiff "has no responsive documents in his possession, custody, or control." As discussed above, however, Plaintiff's definition of "possession, custody or control" is contrary to well-established law.

Thus, please confirm by **May 8, 2009** that Plaintiff has no documents responsive to these RFPS under the proper definition of "possession, custody, or control."

V. Plaintiff's Document Production

In your April 30, 2009 letter, you state that "Plaintiff will supplement and make available for inspection and copying … on May 4, 2009 at The Dickerson Law Group, P.A. 5003 Horizons Drive, Suite 101, Columbus, Ohio 43220. You also state that "Plaintiff expressly reserves the right to supplement his responses to Defendant JAKKS First Set of Requests for Production of Documents."

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Sharlene I. Chance
May 1, 2009
Page 3

As you know, Defendants have already incurred expenses for sending someone to copy documents responsive to Defendant JAKKS First Set of Requests for Production of Documents at Plaintiff's counsel's location in Ohio. The documents currently being made available for inspection and copying should have been produced at that time. In addition, your letter indicates that there will likely be additional productions of documents responsive to Defendant JAKKS First Set of Requests for Production of Documents (*i.e.* documents requested from Plaintiff's former counsel). Again, these documents should have been produced at that time.

It is patently unreasonable for Defendants to incur the costs associated with additional travel to Plaintiff's counsel's office, especially where the documents should have been produced in the first instance and Plaintiff has offered no reason as to why these documents were not produced in the first instance. Thus, Defendants request that Plaintiff copy the documents it plans to produce and send the copies to Defendants' counsel's office in Los Angeles, California. Defendants agree to pay reasonable costs associated with the copying and sending of these documents.

Please let us know by **May 6, 2009** whether Plaintiff agrees to send copies of the documents to Defendants' counsel in Los Angeles, California.

Sincerely,

Michael J. Song

cc: Brian E. Dickerson (via email)
Grant E. Kinsel (via email)

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May 8, 2009

VIA ELECTRONIC MAIL

Michael Song
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Foley & Lardner LLP
555 South Flower Street
Suite 3500
Los Angeles, CA 90071

RE: *Clark v. The Walt Disney Company, et al*
Case No.: 2:08CV982

Dear Michael,

Thank you for your letter dated May 1, 2009. In response to the same:

I. Possession, Custody, or Control

Defendants have demanded that Plaintiff supplement his responses with any and all documents responsive to JAKKS' First Set of Requests for Production that are in Plaintiff's "possession, custody or control" by May 8, 2009 ("demanded date"). For the reasons outlined in the April 30, 2009 letter and set forth below, Plaintiff is unable to supplement his responses on this demanded date.

Under Fed.R.Civ.P. 34, Plaintiff has reviewed all the files in his possession which may contain documents responsive to JAKKS First Set of Requests for Production. *See*, *Bank of New York v. Meridien Biao Bank Tanz. Ltd.*, 171 F.R.D. 135, 147-54 (S.D.N.Y. 1997). Those files in Plaintiff's possession have been produced in response to JAKKS requests. In addition, Plaintiff has continually inquired about responsive documents in possession of his former lawyer and licensees. *Chase Manhattan Bank, N.A. v. T&N plc*, 1991 U.S. Dist. LEXIS 13035 (S.D.N.Y. Sept. 19, 1991). Plaintiff has been searching for responsive documents, will continue his

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search, and will continue to produce any responsive documents once his search is complete. However, this production of additional responsive documents cannot be supplemented on the demanded date.

To challenge Plaintiff's representations on his efforts to locate any responsive documents, Defendant JAKKS can depose Plaintiff and obviously question him regarding what efforts he is making and has made to obtain any documents. However, Plaintiff has been fully cooperating with Defendant JAKKS' requests by searching, attempting to locate from third parties and producing relevant documents from his files.

II. RFP Nos. 1-3, 4-5, 7-9, 11, 14, 17

Respectfully, Plaintiff has exercised his legal right and due diligence in obtaining all documents from his former counsel. Plaintiff is neither holding onto nor refusing to supplement any of JAKKS requests for production to which Plaintiff has documents in his "possession, custody or control" which are responsive. However, Plaintiff cannot supplement those requests by the demanded date because he has not received documents to produce. Once Plaintiff receives the documents he has requested that relate to the preparation and/or prosecution of Related Patent Matters including but not limited to Application Serial Nos. 08-651,332, 08/666,136 or 08/968, 557 and which are responsive to RFP Nos, 1-3, 4-5, 7-9, 11, 14, 17, the same will be supplemented accordingly.

III. RFP Nos. 26-31, 33 and 57

A. License Agreements

First, Plaintiff is fully aware that he has a legal right, as licensor, to obtain documents from its licensees upon request. A draft copy of the licensing agreement between Resaurus and Plaintiff was previously produced in response to JAKKS requests. However, Plaintiff is inquiring about executed license agreements in possession of the licensees. Until such time, Plaintiff is unable to produce any license agreements on the demanded date.

B. Assignment Agreement

Plaintiff is also inquiring about responsive documents in possession of his former lawyer as it relates to the Patent-in-Suit. Such document will be supplemented accordingly upon receipt.

IV. RFP Nos. 19-25, 50-53

As confirmation, Plaintiff has no documents responsive to RFP Nos. 19-21, 23-24 in his "possession, custody or control." Unless already produced in documents relating to the Patent-in-Suit, Plaintiff confirms he has no additional documents in his "possession, custody or control" that are responsive to RFP No. 24. Aside from this current litigation, Plaintiff confirms he has no documents responsive to RFP No. 25 in his "possession, custody or control."

At this time and until further discovery is conducted and Plaintiff receives documents responsive to discovery propounded on Defendants JAKKS, Play Along Toys, Toys "R" Us and Disney Shopping, Inc., Plaintiff has no documents in his "possession, custody or control" which are responsive to RFP Nos. 50-51.

Plaintiff confirms that he has no additional documents in his possession, custody or control, in response to RFP No. 52. Any additional evidence reflecting and referring to loss sales or licensing royalties suffered by Plaintiff are through witness testimony.

All documents evidencing, reflecting or referring to the nature and amount of any reasonable royalty that Plaintiff is entitled to as a result of Defendants' infringement of the Patent-in-Suit will be supplemented accordingly per the Court's April 20, 2009 Discovery Conference Order by May 18, 2009.

V. Plaintiff's Document Production

Under Fed.R.Civ.P. 34, Plaintiff is only required to make the requested documents available for inspection and copying. Rule 34 allows the Defendants "to inspect and copy" relevant documents and does not require Plaintiff to pay for copying costs and shipment. *Obiajulu v. City of Rochester, Dep't of Law*, 166 F.R.D. 293, 297 (W.D.N.Y. 1996). *See generally*, Moore's Federal Practice - - Civil § 34.14.6 ("A party producing documents will ordinarily not be put to the expense of making copies for the requesting party."). However, Defendants have agreed to pay reasonable costs associated with copying and shipment of the documents. As such, and as a follow-up to our May 7, 2009 conversation, Plaintiff agrees to send copies of responsive documents to Defendants' counsel office in Los Angeles, California.

As I informed you in our May 7, 2009 conversation, the duplication includes numerous Covered Products which range in size from 11x17 to 20x32, in addition to document duplication. In order to eliminate any future dispute regarding "reasonable costs" for the duplication of responsive documents, we have agreed that I will provide you with the proposed cost for the duplication on Monday, May 11, 2009. Unless otherwise directed, the documents will be shipped to Defendants' counsel Los Angeles office via Regular U.S. Mail in order to keep the costs reasonable. We expect to ship those documents on Wednesday, May 13, 2009. If we are unable to ship the documents on this date, due to a delay in the duplication process, I will update you accordingly.

Plaintiff continues to expressly reserve the right to supplement his responses to Defendant JAKKS' First Set of Requests for Production of Documents.

Thank you,

Sharlene Chance

Sharlene I. Chance

Encl.

cc: Grant Kinsel (via e-mail)
Brian E. Dickerson (via e-mail)

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JUN 22 2009
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June 19, 2009

VIA FEDERAL EXPRESS

Michael Song
Foley & Lardner LLP
555 South Flower Street
Suite 3500
Los Angeles, CA 90071

RE: *Clark v. The Walt Disney Company, et al*
Case No.: 2:08CV982

M. Roberts

Dear Mr. Song,

Attached please find the following two (2) CDs containing documents responsive to Defendant JAKKS Pacific Inc. ("JAKKS") First Request for Production of Documents:

01CLARK_0001-157
03CLARK_1-253

Thank you,

Sharlene Chance

Sharlene I. Chance

Encl.

cc: Brian E. Dickerson (via e-mail w/o attachments)
Kevin Conners (via e-mail w/o attachments)

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